

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted October 4, 2023

Decided October 5, 2023

Before

DIANE S. SYKES, *Chief Judge*

DIANE P. WOOD, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-1283

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DONNIE A. SHERRELL,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of Illinois.

No. 3:22-CR-30095-SMY-1

Staci M. Yandle,
Judge.

ORDER

Donnie Sherrell appeals the sentence he received after pleading guilty to unlawfully possessing a firearm. His appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). In his brief, counsel explains the nature of the case and addresses issues that a case of this kind would typically involve. Because counsel's analysis appears thorough, and Sherrell did not respond to the motion, *see* CIR. R. 51(b), we limit our review to the subjects that counsel discusses. *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014). We grant the motion and dismiss the appeal.

Deputies in Madison County, Illinois, arrested Sherrell after he escalated a routine traffic stop into a chase. From the passenger seat, Sherrell pressed the driver's leg onto the accelerator and told him to go. A high-speed chase through residential streets followed. Sherrell—who was then serving a second term of federal supervised release after the original term was revoked—soon got out of the car and fled on foot, with deputies pursuing him. During the foot chase, Sherrell ditched a gun in an elementary-school playground. Based on these events, Sherrell pleaded guilty, without a plea agreement, to possession of a firearm by a felon, 18 U.S.C. § 922(g)(1).

The U.S. Probation Office prepared a presentence investigation report (PSR). Applying the Sentencing Guidelines, the PSR began with a base offense level of 20 because Sherrell possessed a semi-automatic firearm capable of accepting a large capacity magazine. *See* U.S.S.G. § 2K2.1(a)(4)(B). Two levels were added because Sherrell recklessly created a substantial risk of death or serious bodily injury to others while fleeing from the deputies. *See* U.S.S.G. § 3C1.2. Finally, three levels were subtracted because Sherrell accepted responsibility for his actions and gave notice early enough to save the government resources. *See* U.S.S.G. § 3E1.1(a), (b). Based on a total offense level of 19 and Sherrell's criminal history category of III, the guidelines range for his sentence was 37 to 46 months' imprisonment and 1 to 3 years' supervised release. Neither party objected to these calculations or the rest of the PSR.

In his sentencing memorandum, Sherrell requested a within-guidelines prison sentence and three years of supervised release. The government argued that a substantial upward variance—a 10-year prison sentence—was warranted, emphasizing that Sherrell had just served a 70-month prison term that did not deter him from quickly reoffending while he was on supervised release.

At the sentencing hearing, the district judge confirmed that there were no objections to the PSR and adopted it in full. She then heard the parties' arguments and weighed the sentencing factors under 18 U.S.C. § 3553(a). In selecting a prison term of 84 months, the judge explained that factors including the dangerous circumstances of the offense and Sherrell's recent and serious criminal history weighed in favor of an above-guidelines sentence and three years of supervised release.

That brings us to this appeal. In his brief, counsel first tells us that he advised Sherrell about the risks and benefits of challenging his guilty plea and reports that Sherrell wishes to challenge only his sentence. Counsel therefore properly forgoes

discussing whether the plea was valid. *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Next, counsel correctly acknowledges that Sherrell could not plausibly challenge his sentence on procedural grounds. Any review of the guidelines calculation would be for plain error. *See United States v. Castaneda*, 77 F.4th 611, 614 (7th Cir. 2023). And we see no such error. Further, the transcript shows that the judge heard Sherrell's allocution and mitigating arguments, discussed the § 3553(a) factors, and otherwise complied with procedural requirements. *See Gall v. United States*, 552 U.S. 38, 53 (2007).

Counsel also concludes that arguments challenging the substantive reasonableness of Sherrell's sentence would be frivolous. We agree. Although Sherrell's sentence is significantly above the guidelines range, we do not presume it to be unreasonable; as with any sentence, we review for abuse of discretion. *Id.* at 51. And we will uphold an above-guidelines sentence if the judge adequately explained the size of the variance, consistent with 18 U.S.C. § 3553(a). *United States v. Ingram*, 40 F.4th 791, 796 (7th Cir. 2022). The judge here did just that. She explained that the circumstances of the offense—Sherrell instigated a high-speed chase in a residential neighborhood and ended up, armed, on a school playground—were particularly troubling. She also emphasized the need to promote respect for the law and found that Sherrell's persistent history of firearms offenses and repeated violations of supervised release demonstrated a pattern of disregard for the law that his criminal history category underrepresented. Last, the judge recognized that Sherrell reoffended within months of completing a 70-month sentence, and she reasonably concluded that a longer sentence would better deter Sherrell and protect the public.

Finally, we agree with counsel that challenges to Sherrell's term of supervised release and financial penalty would be fruitless. In selecting a three-year term of supervision, the judge again cited the § 3553(a) factors and found that Sherrell's criminal history and his record of violating supervised release justified the length. This explanation suffices. *See Gall*, 552 U.S. at 51. Sherrell was also given advance notice of the conditions of supervised release in the PSR and did not object to any. *See United States v. Flores*, 929 F.3d 443, 449–50 (7th Cir. 2019). As for the \$200 fine, the judge properly considered Sherrell's inability to pay in imposing a fine that is well below the minimum recommendation. *See U.S.S.G. § 5E1.2(c)(3), (e)*.

We GRANT the motion to withdraw and DISMISS the appeal.